

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JANE DOE,

Plaintiff,

vs.

**ANSWER TO
AMENDED COMPLAINT**

Case No. 21-CV-06353

AR, MICHAEL S. RUSSELL, ANDREA T. RUSSELL,
MJN, ROBERT G. NOVITSKY, ALICIA M.
NOVITSKY a/k/a ALICIA JEAN, TJH, TIMOTHY J.
HAY, SHANNON M. HAY, BA, LOUIS B.
APPLEBAUM, and JULIE D. APPLEBAUM,

Defendants.

The Defendants, AR, MICHAEL S. RUSSELL and ANDREA T. RUSSELL, by their attorneys, GOLDBERG SEGALLA LLP, for their Answer to the Amended Complaint of the Plaintiff, set forth the following:

1. The Hon. Frank P. Geraci Jr.'s May 23, 2022 Decision and Order dismissed the First, Tenth, Eleventh, Twelfth, Thirteenth, Fourteenth, Fifteenth, Sixteenth, Seventeenth, Twenty-Sixth, Twenty-Seventh, Twenty-Eighth, Twenty-Ninth, Thirtieth, Thirty-First, Thirty-Second and Thirty-Third Causes of Action of Plaintiff's Complaint and therefore no responsive pleading is required for paragraphs 101, 102, 103, 104, 105, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296 and 297.

2. The allegations alleged in paragraphs 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204,

205, 206, 207, 208, 209, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372 and 373 of Plaintiff's Complaint are not directed to Defendants AR, Michael S. Russell and Andrea T. Russell and therefore no responsive pleading is necessary.

3. **DENY** the allegations contained in paragraph 1 of the Plaintiff's Amended Complaint.

4. With respect to the allegations contained in paragraph 2 of the Plaintiff's Amended Complaint, these Answering Defendants will neither admit nor deny said allegations as they call for a legal conclusion. To the extent that an answer is required, the allegations are denied.

5. **DENY** the allegations contained in paragraph 3 of the Plaintiff's Amended Complaint.

6. With respect to the allegations contained in paragraph 4 of the Plaintiff's Amended Complaint, these Answering Defendants will neither admit nor deny said allegations as they call for a legal conclusion. To the extent that an answer is required, the allegations are denied.

7. With respect to the allegations contained in paragraph 5 of the Plaintiff's Amended Complaint, these Answering Defendants will neither admit nor deny said allegations as they call for a legal conclusion. To the extent that an answer is required, the allegations are denied.

8. **DENY** knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 6 of the Plaintiff's Amended Complaint.

9. **DENY** the allegations contained in paragraph 7 of the Plaintiff's Amended Complaint.

10. **ADMIT** the allegations contained in paragraph 8 of the Plaintiff's Amended Complaint.

11. **ADMIT** the allegations contained in paragraph 9 of the Plaintiff's Amended Complaint.

12. **DENY** knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 10 of the Plaintiff's Amended Complaint.

13. **DENY** knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 11 of the Plaintiff's Amended Complaint.

14. **DENY** knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 12 of the Plaintiff's Amended Complaint.

15. **DENY** knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 13 of the Plaintiff's Amended Complaint.

16. **DENY** knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 14 of the Plaintiff's Amended Complaint.

17. **DENY** knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 15 of the Plaintiff's Amended Complaint.

18. **DENY** knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 16 of the Plaintiff's Amended Complaint.

19. **DENY** knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 17 of the Plaintiff's Amended Complaint.

20. **DENY** knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 18 of the Plaintiff's Amended Complaint.

21. **DENY** knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 19 of the Plaintiff's Amended Complaint.

22. **DENY** knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 20 of the Plaintiff's Amended Complaint.

23. **ADMIT** the allegations contained in paragraph 21 of the Plaintiff's Amended Complaint.

24. **DENY** knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 22 of the Plaintiff's Amended Complaint.

25. **DENY** knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 23 of the Plaintiff's Amended Complaint.

26. **DENY** knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 24 of the Plaintiff's Amended Complaint.

27. **DENY** knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 25 of the Plaintiff's Amended Complaint.

28. **DENY** knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 26 of the Plaintiff's Amended Complaint.

29. **DENY** knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 27 of the Plaintiff's Amended Complaint.

30. **DENY** knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 28 of the Plaintiff's Amended Complaint.

31. **DENY** knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 29 of the Plaintiff's Amended Complaint.

32. **DENY** knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 30 of the Plaintiff's Amended Complaint.

33. **DENY** knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 31 of the Plaintiff's Amended Complaint.

34. **DENY** knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 32 of the Plaintiff's Amended Complaint.

35. **DENY** the allegations contained in paragraph 33 of the Plaintiff's Amended Complaint.

36. **DENY** the allegations contained in paragraph 34 of the Plaintiff's Amended Complaint.

37. With respect to the allegations contained in paragraph 35 of the Plaintiff's Amended Complaint, these Answering Defendants deny any drinks were provided by Michael and Andrea Russell, deny that AR was drinking, and deny knowledge or information sufficient to form a belief as to the truth of the remaining allegations.

38. **DENY** the allegations contained in paragraph 36 of the Plaintiff's Amended Complaint.

39. **DENY** the allegations contained in paragraph 37 of the Plaintiff's Amended Complaint.

40. **DENY** knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 38 of the Plaintiff's Amended Complaint.

41. **DENY** the allegations contained in paragraph 39 of the Plaintiff's Amended Complaint.

42. **DENY** the allegations contained in paragraph 40 of the Plaintiff's Amended Complaint.

43. **DENY** the allegations contained in paragraph 41 of the Plaintiff's Amended Complaint.

44. **DENY** the allegations contained in paragraph 42 of the Plaintiff's Amended Complaint.

45. **DENY** the allegations contained in paragraph 43 of the Plaintiff's Amended Complaint.

46. **DENY** the allegations contained in paragraph 44 of the Plaintiff's Amended Complaint.

47. **DENY** knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 45 of the Plaintiff's Amended Complaint.

48. With respect to the allegations contained in paragraph 46 of the Plaintiff's Amended Complaint, these Answering Defendants deny the allegations as to AR and deny knowledge or information sufficient to form a belief as to the truth of the allegations for the remaining defendants.

49. With respect to the allegations contained in paragraph 47 of the Plaintiff's Amended Complaint, these Answering Defendants admit that Defendants AR, MJN and TJH returned to BA's house at the insistence of Plaintiff and deny the remaining allegations therein.

50. **DENY** the allegations contained in paragraph 48 of the Plaintiff's Amended Complaint.

51. **DENY** the allegations contained in paragraph 49 of the Plaintiff's Amended Complaint.

52. **DENY** the allegations contained in paragraph 50 of the Plaintiff's Amended Complaint.

53. With respect to the allegations contained in paragraph 51 of the Plaintiff's Amended Complaint, these Answering Defendants admit that Plaintiff willingly performed oral sex on the boys and deny the remaining allegations therein.

54. **DENY** the allegations contained in paragraph 52 of the Plaintiff's Amended Complaint.

55. **DENY** the allegations contained in paragraph 53 of the Plaintiff's Amended Complaint.

56. **DENY** the allegations contained in paragraph 54 of the Plaintiff's Amended Complaint.

57. **DENY** the allegations contained in paragraph 55 of the Plaintiff's Amended Complaint.

58. **DENY** knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 56 of the Plaintiff's Amended Complaint.

59. **DENY** the allegations contained in paragraph 57 of the Plaintiff's Amended Complaint.

60. **DENY** the allegations contained in paragraph 58 of the Plaintiff's Amended Complaint.

61. With respect to the allegations contained in paragraph 59 of the Plaintiff's Amended Complaint, these Answering Defendants deny the allegations as to AR, deny any rape occurred and deny knowledge or information sufficient to form a belief as to the truth of the remaining allegations against co-defendants.

62. With respect to the allegations contained in paragraph 60 of the Plaintiff's Amended Complaint, these Answering Defendants deny any alleged rape, deny knowledge of anything Plaintiff allegedly observed and deny that AR said anything about a flashlight.

63. With respect to the allegations contained in paragraph 61 of the Plaintiff's Amended Complaint, these Answering Defendants deny that AR took any pictures or video and deny knowledge of anything Plaintiff heard or observed.

64. With respect to the allegations contained in paragraph 62 of the Plaintiff's Amended Complaint, these Answering Defendants deny that AR took pictures, deny any alleged rape and deny knowledge of brand of phones owned by co-defendants.

65. **DENY** knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 63 of the Plaintiff's Amended Complaint.

66. With respect to the allegations contained in paragraph 64 of the Plaintiff's Amended Complaint, these Answering Defendants deny any rape occurred and deny knowledge or information sufficient to form a belief as to the truth of the remaining allegations.

67. With respect to the allegations contained in paragraph 65 of the Plaintiff's Amended Complaint, these Answering Defendants deny any alleged rape, deny allegations as to AR and deny knowledge or information sufficient to form a belief as to the truth of the remaining allegations against co-defendants.

68. **DENY** knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 66 of the Plaintiff's Amended Complaint.

69. **DENY** the allegations contained in paragraph 67 of the Plaintiff's Amended Complaint.

70. **DENY** knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 68 of the Plaintiff's Amended Complaint.

71. **DENY** knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 69 of the Plaintiff's Amended Complaint.

72. **DENY** knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 70 of the Plaintiff's Amended Complaint.

73. With respect to the allegations contained in paragraph 71 of the Plaintiff's Amended Complaint, these Answering Defendants deny any "ordeal" and deny knowledge or information sufficient to form a belief as to the truth of the remaining allegations.

74. With respect to the allegations contained in paragraph 72 of the Plaintiff's Amended Complaint, these Answering Defendants deny any alleged rape, deny allegations as to AR and deny knowledge or information sufficient to form a belief as to the truth of the allegations against co-defendants.

75. With respect to the allegations contained in paragraph 73 of the Plaintiff's Amended Complaint, these Answering Defendants deny any alleged rape, deny allegations as to AR and deny knowledge or information sufficient to form a belief as to the truth of the allegations against co-defendants.

76. With respect to the allegations contained in paragraph 74 of the Plaintiff's Amended Complaint, these Answering Defendants deny any alleged rape, deny allegations as to AR and deny knowledge or information sufficient to form a belief as to the truth of the allegations against co-defendants.

77. With respect to the allegations contained in paragraph 75 of the Plaintiff's Amended Complaint, these Answering Defendants deny any alleged rape, deny allegations as to AR and deny knowledge or information sufficient to form a belief as to the truth of the allegations against co-defendants.

78. With respect to the allegations contained in paragraph 76 of the Plaintiff's Amended Complaint, these Answering Defendants deny any alleged rape and deny knowledge or information sufficient to form a belief as to the truth of the remaining allegations.

79. With respect to the allegations contained in paragraph 77 of the Plaintiff's Amended Complaint, these Answering Defendants deny allegations as to AR and deny knowledge or information sufficient to form a belief as to the truth of the allegations against co-defendants.

80. With respect to the allegations contained in paragraph 78 of the Plaintiff's Amended Complaint, these Answering Defendants deny any alleged rape and deny knowledge or information sufficient to form a belief as to the truth of the remaining allegations.

81. With respect to the allegations contained in paragraph 79 of the Plaintiff's Amended Complaint, these Answering Defendants deny any alleged rape and deny knowledge or information sufficient to form a belief as to the truth of the remaining allegations.

82. **DENY** knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 80 of the Plaintiff's Amended Complaint.

83. With respect to the allegations contained in paragraph 81 of the Plaintiff's Amended Complaint, these Answering Defendants deny any alleged rape and deny knowledge or information sufficient to form a belief as to the truth of the remaining allegations.

84. With respect to the allegations contained in paragraph 82 of the Plaintiff's Amended Complaint, these Answering Defendants deny any alleged rape and deny knowledge or information sufficient to form a belief as to the truth of the remaining allegations.

85. With respect to the allegations contained in paragraph 83 of the Plaintiff's Amended Complaint, these Answering Defendants deny any alleged rape, deny allegations as to AR and deny knowledge or information sufficient to form a belief as to the truth of the allegations against co-defendants.

86. With respect to the allegations contained in paragraph 84 of the Plaintiff's Amended Complaint, these Answering Defendants deny any alleged rape, deny allegations as to AR and deny knowledge or information sufficient to form a belief as to the truth of the allegations against co-defendants.

87. **DENY** the allegations contained in paragraph 85 of the Plaintiff's Amended Complaint.

88. **DENY** the allegations contained in paragraph 86 of the Plaintiff's Amended Complaint.

89. **DENY** the allegations contained in paragraph 87 of the Plaintiff's Amended Complaint.

90. **DENY** the allegations contained in paragraph 88 of the Plaintiff's Amended Complaint.

91. **DENY** the allegations contained in paragraph 89 of the Plaintiff's Amended Complaint.

92. With respect to the allegations contained in paragraph 90 of the Plaintiff's Amended Complaint, these Answering Defendants admit that Defendant AR was a minor and deny the remaining allegations therein.

93. **DENY** the allegations contained in paragraph 91 of the Plaintiff's Amended Complaint.

94. **DENY** knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 92 of the Plaintiff's Amended Complaint.

95. **DENY** knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 93 of the Plaintiff's Amended Complaint.

96. **DENY** knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 94 of the Plaintiff's Amended Complaint.

97. **DENY** knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 95 of the Plaintiff's Amended Complaint.

98. **DENY** knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 96 of the Plaintiff's Amended Complaint.

99. **DENY** knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 97 of the Plaintiff's Amended Complaint.

100. With respect to the allegations contained in paragraph 98 of the Plaintiff's Amended Complaint, these Answering Defendants deny the allegations as to Defendants Michael and Andrea Russell and deny knowledge or information sufficient to form a belief as to the truth of the allegations against co-defendants.

101. **DENY** the allegations contained in paragraph 99 of the Plaintiff's Amended Complaint.

102. With respect to the allegations contained in paragraph 100 of the Plaintiff's Amended Complaint, these Answering Defendants deny the allegations as to Defendants Michael and Andrea Russell and deny knowledge or information sufficient to form a belief as to the truth of the allegations against co-defendants.

103. Repeat, reiterate and reallege each and every admission or denial of the allegations contained in paragraph 106 with the same force and effect as though fully set forth therein.

104. With respect to the allegations contained in paragraph 107 of the Plaintiff's Amended Complaint, these Answering Defendants will neither admit nor deny said allegations as they call for a legal conclusion. To the extent that an answer is required, the allegations are denied.

105. **DENY** the allegations contained in paragraph 108 of the Plaintiff's Amended Complaint.

106. **DENY** the allegations contained in paragraph 109 of the Plaintiff's Amended Complaint.

107. With respect to the allegations contained in paragraph 110 of the Plaintiff's Amended Complaint, these Answering Defendants will neither admit nor deny said allegations as they call for a legal conclusion. To the extent that an answer is required, the allegations are denied.

108. Repeat, reiterate and reallege each and every admission or denial of the allegations contained in paragraph 126 with the same force and effect as though fully set forth therein.

109. **DENY** the allegations contained in paragraph 127 of the Plaintiff's Amended Complaint.

110. **DENY the** allegations contained in paragraph 128 of the Plaintiff's Amended Complaint.

111. **DENY** the allegations contained in paragraph 129 of the Plaintiff's Amended Complaint.

112. **DENY** the allegations contained in paragraph 130 of the Plaintiff's Amended Complaint.

113. **DENY** the allegations contained in paragraph 131 of the Plaintiff's Amended Complaint.

114. Repeat, reiterate and reallege each and every admission or denial of the allegations contained in paragraph 182 with the same force and effect as though fully set forth therein.

115. **DENY** the allegations contained in paragraph 183 of the Plaintiff's Amended Complaint.

116. **DENY** the allegations contained in paragraph 184 of the Plaintiff's Amended Complaint.

117. **DENY** the allegations contained in paragraph 185 of the Plaintiff's Amended Complaint.

118. **DENY** the allegations contained in paragraph 186 of the Plaintiff's Amended Complaint.

119. **DENY** the allegations contained in paragraph 187 of the Plaintiff's Amended Complaint.

120. **DENY** the allegations contained in paragraph 188 of the Plaintiff's Amended Complaint.

121. Repeat, reiterate and reallege each and every admission or denial of the allegations contained in paragraph 210 with the same force and effect as though fully set forth therein.

122. **DENY** the allegations contained in paragraph 211 of the Plaintiff's Amended Complaint.

123. **DENY** the allegations contained in paragraph 212 of the Plaintiff's Amended Complaint.

124. **DENY** the allegations contained in paragraph 213 of the Plaintiff's Amended Complaint.

125. **DENY** the allegations contained in paragraph 214 of the Plaintiff's Amended Complaint.

126. **DENY** the allegations contained in paragraph 215 of the Plaintiff's Amended Complaint.

127. Repeat, reiterate and reallege each and every admission or denial of the allegations contained in paragraph 298 with the same force and effect as though fully set forth therein.

128. **DENY** the allegations contained in paragraph 299 of the Plaintiff's Amended Complaint.

129. **DENY** the allegations contained in paragraph 300 of the Plaintiff's Amended Complaint.

130. **DENY** the allegations contained in paragraph 301 of the Plaintiff's Amended Complaint.

131. **DENY** the allegations contained in paragraph 302 of the Plaintiff's Amended Complaint.

132. **DENY** the allegations contained in paragraph 303 of the Plaintiff's Amended Complaint.

133. **DENY** the allegations contained in paragraph 304 of the Plaintiff's Amended Complaint.

134. Repeat, reiterate and reallege each and every admission or denial of the allegations contained in paragraph 305 with the same force and effect as though fully set forth therein.

135. **DENY** the allegations contained in paragraph 306 of the Plaintiff's Amended Complaint.

136. **DENY** the allegations contained in paragraph 307 of the Plaintiff's Amended Complaint.

137. **DENY** the allegations contained in paragraph 308 of the Plaintiff's Amended Complaint.

138. **DENY** the allegations contained in paragraph 309 of the Plaintiff's Amended Complaint.

139. **DENY** the allegations contained in paragraph 310 of the Plaintiff's Amended Complaint.

140. **DENY** the allegations contained in paragraph 311 of the Plaintiff's Amended Complaint.

141. Repeat, reiterate and reallege each and every admission or denial of the allegations contained in paragraph 354 with the same force and effect as though fully set forth therein.

142. **DENY** the allegations contained in paragraph 355 of the Plaintiff's Amended Complaint.

143. **DENY** the allegations contained in paragraph 356 of the Plaintiff's Amended Complaint.

144. **DENY** the allegations contained in paragraph 357 of the Plaintiff's Amended Complaint.

145. **DENY** the allegations contained in paragraph 358 of the Plaintiff's Amended Complaint.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE AGAINST
THE PLAINTIFF'S COMPLAINT, THESE ANSWERING
DEFENDANTS ALLEGE UPON INFORMATION AND BELIEF:**

146. These answering Defendants assert that the Childs Victim Act is unconstitutional.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE AGAINST
THE PLAINTIFF'S COMPLAINT, THESE ANSWERING
DEFENDANTS ALLEGE UPON INFORMATION AND BELIEF:**

147. That in the event the Child Victims Act and/or CPLR §214(g) are deemed unconstitutional and/or invalid, these answering Defendants assert the statute of limitations.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE AGAINST
THE PLAINTIFF'S COMPLAINT, THESE ANSWERING
DEFENDANTS ALLEGE UPON INFORMATION AND BELIEF:**

148. These answering Defendants assert that the Amended Complaint and each Cause of Action therein fails to state a claim upon which relief can be granted.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE AGAINST
THE PLAINTIFF'S COMPLAINT, THESE ANSWERING
DEFENDANTS ALLEGE UPON INFORMATION AND BELIEF:**

149. These answering Defendants assert that Plaintiff's claims are barred, in whole or in part, by the doctrine of laches and the applicable statute of limitations.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE AGAINST
THE PLAINTIFF'S COMPLAINT, THESE ANSWERING
DEFENDANTS ALLEGE UPON INFORMATION AND BELIEF:**

150. These answering Defendants assert that Defendants did not breach any lawful duty owed to Plaintiff.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE AGAINST
THE PLAINTIFF'S COMPLAINT, THESE ANSWERING
DEFENDANTS ALLEGE UPON INFORMATION AND BELIEF:**

151. These answering Defendants assert that all or some of the claims in the Amended Complaint are barred because the alleged violations and damages sustained by Plaintiff, if any, were caused by the acts of a third party over whom Defendants had no control.

**AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE AGAINST
THE PLAINTIFF'S COMPLAINT, THESE ANSWERING
DEFENDANTS ALLEGE UPON INFORMATION AND BELIEF:**

152. These answering Defendants assert that Plaintiff's claims are barred, in whole or in part, because the acts of others constitute responsible and/or intervening and/or superseding causes of Plaintiff's alleged damages.

**AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE AGAINST
THE PLAINTIFF'S COMPLAINT, THESE ANSWERING
DEFENDANTS ALLEGE UPON INFORMATION AND BELIEF:**

153. These answering Defendants assert that all or some of the claims in the Complaint are barred because the damages sustained by Plaintiff, if any, were not caused by Defendants.

**AS AND FOR A NINTH AFFIRMATIVE DEFENSE AGAINST
THE PLAINTIFF'S COMPLAINT, THESE ANSWERING
DEFENDANTS ALLEGE UPON INFORMATION AND BELIEF:**

154. The Child Victims Act violates these answering Defendants' Due Process rights under the New York State Constitution (Const. Art I, §6).

**AS AND FOR A TENTH AFFIRMATIVE DEFENSE AGAINST
THE PLAINTIFF'S COMPLAINT, THESE ANSWERING
DEFENDANTS ALLEGE UPON INFORMATION AND BELIEF:**

155. In the event that the Plaintiff recovers damages which have been paid or are payable by a collateral source, Defendants will seek an offset to such damages pursuant to Article 45 of the CPLR.

**AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE AGAINST
THE PLAINTIFF'S COMPLAINT, THESE ANSWERING
DEFENDANTS ALLEGE UPON INFORMATION AND BELIEF:**

156. If these answering Defendants are found liable as alleged in the Amended Complaint, Defendants allege that the provisions of CPLR 1601 will apply.

**AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE AGAINST
THE PLAINTIFF'S COMPLAINT, THESE ANSWERING
DEFENDANTS ALLEGE UPON INFORMATION AND BELIEF:**

157. Any proof adduced or presented during any trial of this matter on the issue of punitive damages and any such resulting award must conform to the procedural and substantive constitutional limitations set forth in the due process clauses of the 14th Amendment to the United States Constitution and the applicable sections of the New York State Constitution.

**AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE AGAINST
THE PLAINTIFF'S COMPLAINT, THESE ANSWERING
DEFENDANTS ALLEGE UPON INFORMATION AND BELIEF:**

158. That any alleged injury and damages sustained by Plaintiff was worsened by the failure of the Plaintiff to act to mitigate such injury and damage.

**AS AND FOR A FOURTEENTH AFFIRMATIVE DEFENSE AGAINST
THE PLAINTIFF'S COMPLAINT, THESE ANSWERING
DEFENDANTS ALLEGE UPON INFORMATION AND BELIEF:**

159. Plaintiff's Amended Complaint must be dismissed to the extent that Plaintiff has failed to name a necessary party.

**AS AND FOR A FIFTEENTH AFFIRMATIVE DEFENSE AGAINST
THE PLAINTIFF'S COMPLAINT, THESE ANSWERING
DEFENDANTS ALLEGE UPON INFORMATION AND BELIEF:**

160. Upon information and belief, the alleged sexual activity was commenced at the insistence of the Plaintiff and performed by her with her full and expressed consent.

**AS AND FOR A SIXTEENTH AFFIRMATIVE DEFENSE AGAINST
THE PLAINTIFF'S COMPLAINT, THESE ANSWERING
DEFENDANTS ALLEGE UPON INFORMATION AND BELIEF:**

161. Defendant AR did not take, share or otherwise transmit any photographs or videos of the encounter with Plaintiff.

**AS AND FOR A SEVENTEENTH AFFIRMATIVE DEFENSE AGAINST
THE PLAINTIFF'S COMPLAINT, THESE ANSWERING
DEFENDANTS ALLEGE UPON INFORMATION AND BELIEF:**

162. Upon information and belief, Plaintiff has not suffered any damages from the consensual sexual encounter inaccurately described in her Amended Complaint and, as such, is not entitled to any recovery.

**AS AND FOR AN EIGHTEENTH AFFIRMATIVE DEFENSE AGAINST
THE PLAINTIFF'S COMPLAINT, THESE ANSWERING
DEFENDANTS ALLEGE UPON INFORMATION AND BELIEF:**

163. The Plaintiff has failed to state facts sufficient to sustain a recovery of punitive damages under the applicable law, and may not assert a claim for punitive damages against the answering Defendants. Therefore, the claim for punitive damages must be dismissed.

**AS AND FOR A NINETEENTH AFFIRMATIVE DEFENSE AGAINST
THE PLAINTIFF'S COMPLAINT, THESE ANSWERING
DEFENDANTS ALLEGE UPON INFORMATION AND BELIEF:**

164. Upon information and belief, the Plaintiff failed to timely report the alleged actions on the part of the answering Defendants that constitute sexual abuse and/or unlawful conduct.

**AS AND FOR A TWENTIETH AFFIRMATIVE DEFENSE AGAINST
THE PLAINTIFF'S COMPLAINT, THESE ANSWERING
DEFENDANTS ALLEGE UPON INFORMATION AND BELIEF:**

165. That if the Plaintiff has received sums of money in settlement of the claims asserted herein, and that by reason thereof, these answering Defendants are entitled to the protection, provisions and limitations of Section 15-108 of the General Obligations Law of the State of New York in reducing the claim of the Plaintiff against the Defendants, by the amount stipulated in the Release, the amount of consideration paid for it or the amount of the released Defendants' equitable share of the damages, whichever is the greatest.

WHEREFORE, Defendants AR, MICHAEL S. RUSSELL and ANDREA T. RUSSELL demand judgment dismissing the Plaintiff's Amended Complaint, together with the costs and disbursements of this action.

Dated: Buffalo, New York
June 7, 2022

GOLDBERG SEGALLA LLP



By: _____

Michael E. Appelbaum, Esq.
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TO: **All Counsel of Record**